



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 69

[EPA-R09-OAR-2013-0697; FRL-9902-75-Region 9]

**Approval and Promulgation of Implementation Plans;
Commonwealth of the Northern Mariana Islands; Prevention of
Significant Deterioration; Special Exemptions from
Requirements of the Clean Air Act**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act, EPA is proposing to disapprove the state implementation plan (SIP) for the Commonwealth of the Northern Mariana Islands (CNMI) with respect to prevention of significant deterioration (PSD), and to incorporate by reference the Federal PSD regulations into the applicable CNMI plan. EPA is also proposing to approve a petition by CNMI for an exemption of the applicable PSD major source baseline date and trigger date under Federal PSD regulations, and to establish an alternate date, January 13, 1997, as the major source baseline date and trigger date in CNMI. EPA is also proposing to make certain corrections that were made in

previous rulemakings. This action would establish the Federal PSD regulations as a basic element of the CNMI implementation plan and, through the exemption, would establish January 13, 1997 as the major source baseline date (and trigger date) under the PSD program in CNMI for sulfur dioxide, PM₁₀ and nitrogen dioxide.

DATES: Comments must be received on or before [Insert date 30 days from the date of publication in the Federal Register]. Request for a public hearing must be received by [Insert date 15 days from the date of publication in the Federal Register]. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2013-0697, by one of the following methods:

- Federal eRulemaking Portal: www.regulations.gov.
Follow the on-line instructions.
- E-mail: rios.gerardo@epa.gov.
- Mail or deliver: Gerardo Rios (AIR-3), U.S.
Environmental Protection Agency Region IX, 75
Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public

docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. The www.regulations.gov portal is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location

(e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: La Weeda Ward, (213) 244-1812 or ward.laweeda@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Prevention of Significant Deterioration

A. Background

Under the Clean Air Act (CAA or "Act"), as amended in 1970, EPA established the first national ambient air quality standards (NAAQS or "standard"), which represent standards EPA has determined are requisite to protect the public health and welfare. Once EPA has established a NAAQS, under CAA section 110(a), each state is required within a prescribed period of time to adopt and submit a plan, referred to as the State Implementation Plan (SIP), which provides for implementation, maintenance, and enforcement of such NAAQS. Under the Clean Air Amendments of 1970, the term "state" was defined in section 302(d) as meaning one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. The Commonwealth of the Northern Mariana Islands (CNMI) was not included within the meaning of "state" under the 1970 Amended Act.¹ At the time of the 1970

¹ CNMI consists of 15 islands of volcanic origin which are located approximately 145° to 146° east and from 14° to 20° north of the equator. The islands extend in a general north-south direction for approximately 420 nautical miles from the Island of Farallon de Pajaros in the north to the island of Rota in the south. CNMI lies in the

Act Amendments, CNMI was part of the post-World War II United Nations' Trust Territory of the Pacific Islands (TPPI). In 1976, Congress approved the mutually negotiated Covenant to Establish a Commonwealth of the Northern Mariana Islands (CNMI) in Political Union with the United States.

Generally speaking, SIPs must include a number of substantive elements including, but not limited to, rules establishing emission limitations, permit programs for new or modified major stationary sources ("New Source Review," or NSR), programs for monitoring ambient air concentrations, and necessary assurances that the State has adequate legal authority and resources to implement the SIP.

Once a SIP is submitted, EPA must take action to approve or disapprove it, in whole or in part. If, however, a state fails to submit a SIP or a portion of the SIP, or if EPA disapproves a SIP or portion of the SIP, then generally speaking, EPA must promulgate a Federal Implementation Plan (FIP) to address the plan deficiency.

western part of the Pacific Ocean and is located approximately 1,250 miles south of Tokyo, 1,440 miles east of Manila, and 110 miles north of Guam. Based on Bureau of Census 2010 population counts, the total population of CNMI is approximately 54,000 with the majority of the population residing on Saipan.

Together, the approved portions of the SIP and EPA's FIP for a given state constitute that state's applicable plan for the purposes of the CAA. See 40 CFR 52.02(b). Each state's applicable plan is listed in separate subparts of 40 CFR part 52. For example, the applicable CNMI plan is found in subpart FFF of 40 CFR part 52.

One of the SIP content requirements under section 110 is the requirement to prevent significant deterioration of air quality (PSD) in areas that are meeting the NAAQS through review and permitting of new major stationary sources and major modifications. As such, PSD is a specific type of NSR program. The federal PSD program began in the early 1970's during which EPA reviewed each SIP, determined that the SIPs generally did not contain regulations or procedures specifically addressing PSD, and thus disapproved all of the SIPs to the extent they lacked procedures and regulations for preventing significant deterioration of air quality in portions of the state where air quality is better than one or more the NAAQS. 37 FR 23836 (November 9, 1972).

In 1974, EPA promulgated a PSD FIP (then, and now, codified in 40 CFR 52.21) to apply in all states for which EPA had disapproved the SIP with respect to PSD. 39 FR

42510 (December 5, 1974). In our 1974 final rule, we retained (as 40 CFR 52.21(a)) our 1972 general disapproval statement for all SIPs with respect to PSD. In June 1975, EPA modified part 52 by incorporating specific PSD disapprovals into the applicable subpart for each state in part 52, and EPA modified the general disapproval statement of section 52.21(a) accordingly. EPA indicated that these changes to each subpart had no substantive effect but were rather made so that all regulations applicable to a particular implementation plan would be located in one place. 40 FR 25004 (June 12, 1975).

On August 7, 1977, the CAA Amendments of 1977 became law. The 1977 Amendments changed the 1970 CAA and EPA's regulations in many respects, particularly with regard to PSD. In addition to mandating certain immediately effective changes to EPA's PSD regulations, the 1977 Amendments, in sections 160-169 (i.e., subpart I of part C ("Prevention of Significant Deterioration of Air Quality") of title I), contained comprehensive new PSD requirements. These new requirements were to be incorporated by States into their respective SIPs (under section 110 of the CAA). The 1977 Amendments also revised the definition of the term, "state," in CAA section 302(d), to include CNMI, in

recognition of the change during the 1970s in the relationship between CNMI and United States. CNMI did not become subject to the CAA, however, until January 9, 1978.² On March 3, 1978 (43 FR 8962), EPA established the first area designations under CAA section 107 and thereby divided the states into areas designated as nonattainment, attainment or unclassifiable with respect to each of the various NAAQS. In so doing, EPA designated CNMI as attainment or unclassifiable/attainment for each of the NAAQS, and CNMI continues to be so designated. See 40 CFR 81.354.

In June 1978, in response to the CAA Amendments of 1977, and again in August 1980, in response to litigation, EPA revised the PSD requirements for SIPs in 40 CFR 51.24 (renumbered later as 40 CFR 51.166) and the Federal PSD

² CNMI is an insular territory of the United States. The relations between CNMI and the United States are governed by the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("Covenant"). See 48 U.S.C. 1801 notes. Section 502 of the Covenant lists laws which are in existence on the effective date of section 502 and states that these laws and the subsequent amendments to such laws will apply to CNMI, unless otherwise specified in the Covenant. Paragraph (1) of section 502 lists federal banking laws, provisions of the Social Security Act and the Public Health Service Act. Paragraph (2) states "those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States." Proclamation No. 4534, signed by President Carter in 1977, states in section 2 that section 502 of the Covenant came into effect on January 9, 1978. See 42 FR 56593. As noted above, Guam has been included in the term "state" for CAA purposes since the 1970 Amended Act.

regulations in 40 CFR 52.21. See 43 FR 26380 and 26388 (June 19, 1978), and 45 FR 52676 (August 7, 1980). At the time these revisions were promulgated, CNMI had not submitted a SIP, and there was no subpart within part 52 addressing the approval status of CNMI. When EPA specified the states which did not meet the new PSD requirements, CNMI was not listed. See 43 FR 26388, at 26410, and 45 FR 52676, at 52741.

Thus, while the CAA, including the PSD requirements in subpart I to part C of title I, has applied to sources on CNMI since January 9, 1978, EPA's PSD regulations in 40 CFR 52.21 that implement the statutory PSD program have not been incorporated into the applicable plan for CNMI. This has lead to uncertainty as to the proper application of PSD to new major sources or major modifications on CNMI.

On February 19, 1986, CNMI submitted their air pollution control regulations, including rules governing NSR. Later that year, CNMI revised the regulations and re-submitted them on February 19, 1987. On November 13, 1987 (52 FR 43574), EPA approved the NSR-related rules as part of the CNMI SIP. In taking this action, EPA noted that approval of the CNMI rules was not to be construed as indicating satisfaction of the specific requirements for

PSD. See 52 FR 43574.

Since the most recent approval of the CNMI SIP in 1987, under CAA sections 108 and 109, EPA has conducted periodic reviews of the NAAQS and has, in recent years, established certain new or revised NAAQS. As noted above, under section 110(a), States must submit a plan that provides for implementation, maintenance, and enforcement of such NAAQS. The CAA directs EPA to make findings of failure to submit (such a plan or portion of a plan) if a plan or portion of a plan is not forthcoming from the State. EPA has made such findings for certain new or revised NAAQS with respect to CNMI.

In March 2008, EPA published a finding of failure to submit with respect to the 1997 8-hour ozone NAAQS for a number of states, including CNMI. 73 FR 16205 (March 27, 2008). EPA's March 2008 finding relates to the SIP elements listed in CAA section 110(a)(2), including failure to submit a SIP addressing section 110(a)(2)(C) (the Part C PSD permit program) for the 1997 8-hour ozone NAAQS. Later that year, we made a similar finding with respect to CNMI and the 1997 PM_{2.5} NAAQS. 73 FR 62902 (October 22, 2008). In 2010, we found that CNMI had failed to submit a SIP revision addressing interstate transport requirements with

respect to the 2006 PM_{2.5} NAAQS. 75 FR 32673 (June 9, 2010). Under section 110(a)(2)(D), the SIP submittal requirements related to interstate transport also implicate PSD. These findings of failure to submit created two-year deadlines for EPA to promulgate FIPs unless, prior to that deadline, CNMI makes submissions to meet the requirements and EPA approves such submissions. See section 110(c)(1). No submittals have been forthcoming from CNMI, and the two-year FIP deadlines have expired.

B. EPA's Evaluation of the CNMI SIP and Proposed Action

The basic purpose of the PSD program is to prevent significant deterioration by protecting the NAAQS and "increments" over the baseline concentration in areas designated as attainment or unclassifiable, through a permit program for new major sources and major modifications to major sources. Requirements for SIPs with respect to PSD are found primarily in 40 CFR 51.166.

Under 40 CFR 51.166, each state must adopt and submit rules that: establish certain ambient air increments and ambient air ceilings (40 CFR 51.166(c) and (d)); establish certain area classifications (i.e., class I, II, or III) and restrict certain types of area reclassifications (40 CFR 51.166(e) and (g)); limit the reliance on stack height

in determining the degree of emission limitation (40 CFR 51.166(h)); provide for certain control technology review, including the application of best available control technology (BACT) for each regulated NSR pollutant that a new major source or major modification would have the potential to emit in significant amounts (40 CFR 51.166(j)); provide for certain source impact analyses (40 CFR 51.166(k)); require use of EPA-approved air quality models (40 CFR 51.166(l)); provide for certain preapplication and post-construction air quality analyses and monitoring (40 CFR 51.166(m)); establish certain permit application requirements (40 CFR 51.166(n)); provide for certain additional impact analyses (e.g., visibility impact analyses) (40 CFR 51.166(o)); establish certain additional requirements for sources impacting Federal Class I area (40 CFR 51.166(p)); provide for public participation (40 CFR 51.166(q)); impose certain source obligations (40 CFR 51.166(r)); and establish provision for plantwide applicability limitations (PALs) (40 CFR 51.166(w)). The PSD SIP requirements listed above rely on certain terms, including "major stationary source," "major modification," "net emissions increase," and many others, that are defined specifically for use in the PSD program. See 40 CFR

51.166(b) .

We reviewed the NSR portion of the CNMI SIP, which includes Parts V and X of the "CNMI Air Pollution Control Regulations" that EPA approved on November 13, 1987 (52 FR 43574). Under Part V of CNMI's rules, permits are required for the construction and operation of all new sources or modifications of major sources of emissions. The NSR rules also provide for certain exemptions from the permit requirement; provide for certain application requirements; establish a process for review by the CNMI Division of Environmental Quality (DEQ) of permit applications; authorize DEQ to impose certain types of permit conditions and to require applicants to conduct certain additional analyses (e.g., performance testing); disallow the use of dispersion techniques as a form of controlling air pollution absent EPA exemption; and address administrative matters such as permit suspension, permit transfer, and permit posting, among other such matters. Part X of CNMI's rules provide for public participation prior to approval of an application for an NSR permit for a major source. Under CNMI's NSR rules, DEQ will approve an NSR permit application if the applicant can show to DEQ's satisfaction that: (1) the new source is designed, built and equipped

with reasonably available control technology (RACT); (2) the new source is designed and will be constructed or modified to operate without causing a violation of the applicable rules and regulations; and (3) the new source will not endanger the maintenance or attainment of the NAAQS or ambient air increments as set forth as Maximum Allowable Increases for Class II areas for sulfur dioxide and particulate matter in 40 CFR 52.21(c) and (d).

Our review of the CNMI SIP NSR rules reveals that some aspects of the PSD program required under 40 CFR 51.166 are met, such as the establishment of certain ambient air increments (i.e., increments for sulfur dioxide) and ambient air ceilings (i.e., the NAAQS) that concentrations of pollutants resulting from construction of new major sources and major modifications may not exceed; provisions limiting use of stack height and other dispersion techniques; and certain provisions for public participation (e.g., notice in newspaper of general circulation, and 30-day comment period). However, CNMI's NSR rules do not meet many other PSD requirements, including, e.g., establishment of ambient air increments for nitrogen dioxide, PM₁₀ and PM_{2.5}; provisions requiring application of BACT; provisions requiring use of EPA-approved air quality models; and

provisions allowing establishment of PALs. Moreover, many of the definitions of NSR-related terms in CNMI's rules, e.g., "major stationary source" and "major modification," differ from the corresponding definitions in 40 CFR 51.166(b). Under 40 CFR 51.166(b), deviations in the wording relative to the definition set forth in the Federal PSD regulations will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding EPA definition. Therefore, we propose to disapprove the CNMI SIP as not meeting the requirements for PSD under part C of title I of the CAA and 40 CFR 51.166.

Based on our determination that the current CNMI SIP does not meet the requirements for PSD, EPA is also proposing to apply the Federal PSD program at 40 CFR 52.21 to CNMI, but to grant the petition of CNMI for exemption from the original major source baseline date, as described in the following section of this document. EPA would administer the PSD program for CNMI and would make PSD determinations and issue PSD permits directly from the EPA Region IX office. In the future, if requested, EPA would consider delegation of implementation authority to CNMI

under 40 CFR 52.21(u).

Applying the Federal PSD program to CNMI would address long-standing uncertainties concerning the application of PSD to sources on CNMI and would fulfill EPA's more recent obligations to promulgate a FIP in the wake of our finding of failure by CNMI to submit SIPs for new or revised NAAQS in more recent years, including the 1997 eight-hour ozone standard, the 1997 PM_{2.5} standard, and the 2006 PM_{2.5} standard, to the extent that the required SIP submittals relate to PSD.

II. Major Source Baseline Date

A. Background

Section 325(a)(1) of the CAA authorizes EPA, upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or CNMI, to exempt any person or source or class of persons in such territory from any requirement of the Act other than section 112 ("Hazardous air pollutants") or any requirement under section 110 ("[SIPs] for [NAAQS]") or part D ("[SIP] Requirements for Nonattainment Areas") necessary to attain or maintain a NAAQS. An exemption may be granted if EPA finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of

such territory, or such other local factors as EPA deems significant.

B. CNMI's Petition for Change of Major Source Baseline Date

On October 6, 1998, the Honorable Pedro P. Tenorio, Governor of CNMI, petitioned EPA to establish the effective date of EPA's final conditional exemption from title V requirements as the major source baseline date.³ See letter from Pedro P. Tenorio, Governor, to Felicia Marcus, Region IX Regional Administrator, October 6, 1998. EPA's final conditional exemption was published on November 13, 1996 and became effective on January 13, 1997.⁴

Under the PSD program, the "major source baseline date" is the date after which actual emissions changes associated with modifications (i.e., physical changes or

³ The Governor of CNMI also requested that EPA allow merging of the power plant stacks at a source, as a dispersion technique, in order for power plants operated by the Commonwealth Utilities Corporation (CUC) to meet the NAAQS and PSD increments. EPA is not taking action on this additional request in this action.

⁴ The Governor's October 6, 1998 request states: "In 1994, [CNMI] petitioned the [EPA], under Section 325(a) of the [CAA] for an exemption from Title V which pertains to establishment of an operating permit program. A conditional waiver was granted on November 13, 1996, Insofar as the CNMI was not covered by the CAA in 1975, we believe that the appropriate baseline PSD date for major sources should be the effective date of the Title V waiver, January 13, 1996. Accordingly, we request an amendment to our original 1996 Title V waiver clarifying that the major source PSD baseline date is the effective date of the waiver." We interpret the Governor's reference to "January 13, 1996" to be mistaken and that "January 13, 1997" was the intended date, since the latter represents the effective date of EPA's final conditional exemption published on November 13, 1996. See 61 FR 58284 (November 13, 1996).

changes in the method of operation) at a major stationary source affect the available PSD increment. Other changes in actual emissions occurring at any source after the major source baseline date do not affect the increment, but instead (until after the minor source baseline date is established) contribute to the baseline concentration. The "trigger date" is the date after which the minor source baseline date may be established.

Both the major source baseline date and the trigger date are fixed dates, although the specific dates vary among the pollutants for which PSD increments have been established: sulfur dioxide and respirable particulate matter (PM_{10}), fine particulate matter ($PM_{2.5}$) and nitrogen dioxide. Under 40 CFR 52.21(b)(14), the major source baseline date for sulfur dioxide and PM_{10} is January 6, 1975, and the trigger date for those pollutants is August 7, 1977. For nitrogen dioxide, both the major source baseline date and the trigger date are February 8, 1988. For $PM_{2.5}$, the major source baseline date is October 20, 2010, and the trigger date for those pollutants is October 20, 2011. The "minor source baseline date" is the earliest date after the trigger date on which a complete PSD application is received by the permit reviewing agency, and

thus is not a fixed date.

In concept, the "major source baseline date" establishes a marker in time to track consumption (or expansion) of PSD increments due to modifications at major sources that occur prior to the "minor source baseline date," after which all types of emissions increases and decreases (including mobile sources), i.e., not just those related to modifications at major stationary sources, consume (or expand) the available increment. Moreover, the trigger date is the marker in time after which the "minor source baseline date" can be established, and thus, there is no purpose in establishing a "major source baseline date" after a "trigger date."

The Governor's request refers only to the "major source baseline date" and does not refer to the "trigger date," but because, as explained above, granting a change to the "major source baseline date" without a corresponding change to the "trigger date" would be pointless given the connection between the two terms, we interpret the Governor's request as applying to both terms. Also, the Governor's request was not pollutant-specific, but we interpret it to refer to all pollutants for which the major source baseline date and trigger date were established

under EPA's PSD regulations at the time of the Governor's 1998 petition (i.e., sulfur dioxide, PM₁₀, and nitrogen dioxide, but not PM_{2.5}).⁵

C. EPA's Evaluation of CNMI's Petition and Proposed Action

CNMI has petitioned EPA to exempt CNMI from the original PSD major source baseline date and to establish January 13, 1997 as the PSD major source baseline date for CNMI. As explained above, changing the major source baseline date would also require changing the trigger date. Changing the major source PSD baseline date (and trigger date) will allow existing and future sources on CNMI to use more increment than would have been the case if the original major source baseline date applied, but sources will still be required to comply with NAAQS limits, and with the increment limits calculated from the new 1997 PSD major source baseline date.

Leaving the major source PSD baseline date unchanged would create a unique burden on sources in CNMI. Other States and territories were clearly included in the scope

⁵ CNMI's 1998 request did not apply to the PM_{2.5} NAAQS because the increments, major source baseline date, and trigger date for PM_{2.5} were not established until 2010. See 75 FR 64864 (October 20, 2010). If this proposed action is finalized as proposed, the major source baseline date and trigger date for PM_{2.5} in CNMI would be October 20, 2010 and October 20, 2011, respectively, as set forth at 40 CFR 52.21(b)(14)(i)(c) and 40 CFR 52.21(b)(14)(ii)(c).

of the original PSD regulations and thus have been aware since the late 1970's of the need to quantify major source baseline emissions as of the original major source baseline date and to track emissions changes due to modifications at such major sources in order to calculate available increment when the minor source baseline date is established by the first complete PSD application in a given area. Because the Federal PSD regulations were not previously incorporated into the applicable plan for CNMI, neither CNMI nor sources on CNMI determined the respective baseline of source emissions on the original PSD major source baseline date, or changes to that baseline over time. It would create a unique burden if CNMI must attempt to reconstruct a complete baseline inventory working from the original major source baseline dates, including sources which may have existed in the 1970's but no longer exist today. Applying PSD regulations to CNMI with the original major source baseline dates would thus create a significant burden on new sources and regulators attempting to analyze PSD increment changes. This constitutes a "local factor" that is "significant" in EPA's judgment for the purposes of CAA section 325(a) because of the complications it creates for implementation of the PSD program in CNMI.

Moreover, the specific date of January 13, 1997 as an alternate major source baseline date is appropriate given that it represents the effective date of EPA's approval of CNMI's request for a conditional exemption from the requirement to develop, submit for approval, and implement a title V operating permit program, given that one of the applicable conditions for granting the exemption was a continuing obligation on CNMI to implement its NSR program in such a way as to protect the NAAQS and the PSD increments. See 40 CFR 69.32(c)(1). Prior to this date, EPA had not provided clear instructions to CNMI with respect to the applicability of the PSD program, and correspondingly the need to quantify major source baseline emissions as of the original major source baseline date and to track emissions changes due to modifications at such major sources in order to calculate available increment.

Lastly, we note that approval of the alternate major source baseline date and trigger date for CNMI would not be expected to have any effect on the PSD programs of any other state or territory given prevailing easterly winds and the location of the nearest state or territory, i.e., Guam, which is approximately 110 miles south of CNMI.

Therefore, pursuant to section 325(a)(1) of the CAA,

EPA is proposing to grant the CNMI Governor's 1998 request to establish the effective date of EPA's final conditional exemption from title V requirements as the major source baseline date. Specifically, in granting this request, EPA is proposing to establish January 13, 1997 as the PSD major source baseline date and trigger date (with respect to sulfur dioxide, PM₁₀, and nitrogen dioxide) for sources in CNMI.⁶

III. Corrections

A. Background

Section 110(k)(6) of the CAA provides: "Whenever [EPA] determines that [EPA's] action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, [EPA] may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to

⁶ As noted in footnote 5 of this document, neither the request nor our approval relates to the PM_{2.5} NAAQS. If this action is finalized as proposed, the PM_{2.5} major source baseline date and trigger date would be the dates as provided in 40 CFR 52.21(b)(14)(i)(c) and (ii)(c). Moreover, any baseline dates or trigger dates that EPA establishes for new or modified NAAQS in future revisions to the Federal PSD regulations would be established in those revisions and would not be subject to the January 13, 1997 baseline date and trigger date proposed for approval herein.

the State and public." We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction that (1) we clearly erred in failing to consider or inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 57 FR 56762, at 56763 (November 30, 1992).

B. Proposed Action

First, under section 110(k)(6), EPA is proposing to amend 40 CFR 52.02 and 52.16 to include references to CNMI or subpart FFF (which lists the applicable CNMI plan). EPA should have added these references in 1986 when the Agency took its first action on the CNMI SIP and thereby added subpart FFF to part 52, but failed to do so. See 51 40798, at 40799 (November 10, 1986). We propose to add the appropriate references through this action.

Second, under section 110(k)(6), EPA is proposing to correct the inadvertent listing of the "Part VIII" rules in table 52.2920 in 40 CFR 52.2920 ("Identification of plan"), which sets forth EPA-approved regulations in the CNMI SIP.

Part VIII of CNMI's air pollution control regulations consists of general prohibitory rules (that establish controls on open and agricultural burning, visible emissions, fugitive dust, incineration, process industries, and sulfur oxides from fuel combustion) and variance provisions. EPA has not taken action on any of the Part VIII rules and, thus, Part VIII should not have been listed in table 52.2920 in 40 CFR 52.2920. The Part VIII rules were inadvertently listed when EPA revised the format for the CNMI SIP. See 70 FR 44478, at 44481 (August 3, 2005). EPA proposes to correct this error in this action.

Third, pursuant to section 110(k)(6), EPA is proposing to remove the words ("of lead") in 40 CFR 52.2921(c)(1)(i), which presents the original "Identification of plan" prior to EPA's revision of the format for the CNMI SIP in 2005. In 1987, in the original "Identification of plan" section, EPA mistakenly included the phrase "of lead" in the description of the rules that we approved in November 1987. 52 FR at 43574, at 43575 (November 13, 1987). Both CNMI and EPA have understood the 1987 approval to cover the general NSR regulations as they apply to all criteria air pollutants regulated therein, and not just to lead, which was the subject of a previous action. See 51 FR 40798

(November 10, 1986). This revision would correct the wording in 40 CFR 52.2921(c)(1)(i) to match the intent of CNMI and EPA that the approval was of the generic NSR regulations. In addition, the presence of the reference to "of lead" in connection with EPA's 1987 SIP approval is potentially confusing, and thus, harmful to the regulated community, CNMI, and EPA.

IV. Proposed Action and Request for Public Comment

Under section 110(k) of the CAA, EPA is proposing to disapprove the CNMI SIP with respect to PSD, and incorporate by reference the Federal PSD regulations into the applicable CNMI plan.⁷ EPA is also proposing to approve a petition by CNMI for an exemption of the PSD major source baseline dates and trigger dates for sulfur dioxide, PM₁₀, and nitrogen dioxide under Federal PSD regulations, and to establish an alternate date, January 13, 1997, as the major source baseline date and trigger date for those pollutants in CNMI. Lastly, in addition to proposing conforming amendments to 40 CFR part 52, subparts A and FFF and to 40 CFR part 69, subpart C, EPA is also proposing to make

⁷ While EPA is proposing to disapprove the CNMI with respect to PSD, such disapproval would not affect the validity of any previously approved rules in the CNMI SIP. If finalized as proposed, such SIP rules would continue to be part of the applicable CNMI plan unless and until EPA approves their revocation or revision.

certain corrections to 40 CFR part 52 that were made in previous rulemakings.

If finalized as proposed, this action would establish EPA's PSD regulations as a basic element of the applicable implementation plan for CNMI and, through the exemption, would establish a major source baseline date and trigger date for sulfur dioxide, PM₁₀, and nitrogen dioxide on CNMI of January 13, 1997.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. Request for a public hearing must be received within the next 15 days. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comment.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review by the Office of Management and Budget (OMB).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Reduction Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because, while the disapproval of the CNMI SIP with respect to PSD would lead to the application of the Federal PSD regulations to CNMI, the basic PSD statutory requirements for major emitting facilities to obtain a PSD permit already apply within CNMI, and the incremental impact associated with application of the specific requirements under the Federal PSD regulations would be offset by EPA's grant of CNMI's petition for a waiver of the original PSD major source

baseline dates. Therefore, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and

advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed disapproval of the CNMI SIP with respect to PSD, considered together with the proposed incorporation of the Federal PSD regulations, and grant of an exemption request with respect to the PSD major source baseline date, does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. While the disapproval of the CNMI SIP with respect to PSD would lead to the application of the Federal PSD regulations to CNMI, the basic PSD statutory requirements for major emitting facilities to obtain a PSD permit already apply within CNMI, and the incremental impact associated with application of the specific requirements under the Federal PSD regulations would be offset by EPA's grant of CNMI's petition for a waiver of the original PSD major source baseline dates. Accordingly, the additional costs to State, local, or tribal governments, or to the private sector, would not be significant for the purposes of section 202 of the Unfunded Mandates Act.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State

and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to disapprove the CNMI SIP with respect to PSD, to incorporate the Federal PSD regulations, and to grant an exemption request with respect to the PSD major source baseline date, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175.

It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it proposes to disapprove the CNMI SIP with respect to PSD, to incorporate the Federal PSD regulations, and to grant an exemption request with respect to the PSD major source baseline date.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355,

May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this proposed action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate,

disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

This proposed rulemaking includes a review of the CNMI SIP relative to PSD requirements, incorporation of EPA's PSD regulation into the applicable CNMI plan, and a grant of an exemption to CNMI to the original PSD major source baseline dates. With respect to EPA's review of the CNMI SIP, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act, and incorporation of EPA's PSD regulation is the established remedy for disapproval of the CNMI SIP with respect to PSD. Thus, the EPA lacks the discretionary authority to address environmental justice in those two aspects of this proposed rulemaking.

EPA does have discretionary authority to address environment justice with respect to EPA's consideration of the exemption request from CNMI and has determined that this proposed action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This is because, due to the lack of documentation of major source emissions changes

from the original PSD baseline dates, application of the original major source baseline dates could lead to speculative and uncertain estimates of PSD increment consumption and correspondingly speculative and uncertain levels of environmental protection. In contrast, EPA's grant of CNMI's exemption request sets the stage for consistent and uniform PSD increment tracking and protection within CNMI.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 69

Environmental protection, Air pollution control.

Dated: October 30, 2013
Region IX.

Jared Blumenfeld,
Regional Administrator,

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A – General Provisions

§ 52.02 [Amended]

2. Section 52.02 is amended by:

- a. Revising paragraph (d) introductory text by adding “and FFF” after “DDD”; and
- b. Revising paragraph (d)(2)(ix) by adding “Commonwealth of the Northern Mariana Islands,” after “American Samoa,”.

§ 52.16 [Amended]

3. Amend § 52.16 in paragraph (b)(9) by adding “Commonwealth of the Northern Mariana Islands,” after “American Samoa,” .

§ 52.21 [Amended]

4. Amend § 52.21 in paragraph (a)(1) by adding “and FFF” after “DDD” two times.

Subpart FFF – Commonwealth of the Northern Mariana Islands

§ 52.2920 [Amended]

5. In § 52.2920, amend the table in paragraph (c), under "Part VIII," by removing the entries for "Paragraph A," "Paragraph B," "Paragraph C," "Paragraph D," "Paragraph E," "Paragraph F," "Table VIII-1," "Paragraph G," and "Paragraph H."

§ 52.2921 [Amended]

6. Amend § 52.2921 in paragraph (c) (1) (i) (A) by removing "of lead" after "major sources".

7. Section 52.2922 is added to read as follows:

§52.2922 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met, since the plan does not include approvable procedures for preventing the significant deterioration of air quality.

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraphs

(a) (1), (b) (14) (i) (a) and (b), (b) (14) (ii) (a) and (b), (i) (5) (i) (c), and (k) (2) are hereby incorporated and made a part of the applicable plan for the Commonwealth of the Northern Mariana Islands.

(c) For the purposes of applying the requirements of §52.21 within the Commonwealth of the Northern Mariana Islands, the term "major source baseline date" and "trigger date" means January 13, 1997 in the case of sulfur dioxide, PM₁₀, and nitrogen dioxide.

PART 69 – SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT

8. The authority citation for part 69 continues to read as follows:

Authority: Sec. 325, Clean Air Act, as amended (42 U.S.C. 7625-1).

Subpart C – Commonwealth of the Northern Mariana Islands

9 Section 69.31 is added to read as follows:

§ 69.31 New Exemptions.

(a) Change to Major Source Baseline Date and Trigger Date. Pursuant to section 325(a) of the Clean Air Act and a petition submitted by the Governor of the Commonwealth of the Northern Mariana Islands, EPA grants an exemption to the major source baseline dates and trigger dates for sulfur dioxide, PM₁₀, and nitrogen dioxide under 40 CFR 52.21, and establishes January 13, 1997 as the major source baseline date and trigger date for these pollutants in the

Commonwealth of the Northern Mariana Islands. This exemption applies solely to the PSD major source baseline date and trigger date in the Commonwealth of the Northern Mariana Islands. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered by, implemented or calculated from the PSD major source baseline date, such requirement, increment, or calculation shall, for sources located within the Commonwealth of the Northern Mariana Islands, use January 13, 1997 as the PSD major source baseline date and trigger date for sulfur dioxide, PM₁₀, and nitrogen dioxide.

(b) Reserved.

(c)

(d)

(e) [FR Doc. 2013-27155 Filed 11/22/2013 at 8:45 am;

Publication Date: 11/25/2013]